

REMARKS

Reconsideration is respectfully requested.

The Examiner has stated that Claim 8 and Claim 11 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has rewritten Claim 8 and Claim 11 in independent form including all of the limitations of the base claim and any intervening claims.

35 USC §112, 2ND PARAGRAPH

The Examiner has rejected Claims 9, under 35 USC §112, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Applicant has amended Claim 9 to correct the antecedent basis error.

Thus, it is respectfully submitted that rejection of Claim 9 should be withdrawn.

Applicant believes that all Claims, as amended, are now in proper order with respect to 35 USC §112, 2nd paragraph, and respectfully requests that all such rejections be withdrawn.

35 USC §102

The Examiner has rejected Claims 1, 2, 9, 10 under 35 USC §102, as allegedly being anticipated by Niada (US 5,954,256).

The Examiner has rejected Claims 1, 2, 7, 10, and 13 under 35 USC §102, as allegedly being anticipated by Cravatt (US 6,161,794).

The Examiner has rejected Claims 1, 2, 4, and 10 under 35 USC §102, as allegedly being anticipated by Harris (US 4,124,259).

Regarding Claim 1 and Claim 2:

Applicant has amended Claim 1 and Claim 2 to even more clearly distinguish Applicant's invention from the prior art. None of the above cited references comprises a cradle structured and arranged to support the at least one selected roll adjacent said at least one first material dispenser (see Applicant's specification page 32, lines 4-8), rather these references use a spindle inserted into a toilet paper roll to support the roll axially. Thus, it is respectfully submitted that rejection of Claim 1 and Claim 2 (and all Claims dependent thereon) should be withdrawn.

Applicant has further amended Claim 1 and 2 to even more clearly distinguish Applicant's invention from the prior art. Applicant's invention is at least 20 inches wide (see Applicant's

specification, page 38, lines 8-13). Clearly, the prior art toilet paper dispensers are not wider than 20 inches, and it would not make sense to make them more than 20 inches wide.

Applicant believes that all Claims, as amended, are now allowable with respect to 35 USC §102 and respectfully request that all such rejections be withdrawn.

35 USC §103

The Examiner has rejected Claims 3-6 and Claims 12-16 under 35 USC §103, as allegedly being unpatentable over Niada (US 5,954,256) or Cravatt (US 6,161,794) or Harris (US 4,124,259) in view of Barough (US 3,930,697) or Dunn et al. (5,207,367).

Applicant repeats as though fully set forth here the above arguments.

Applicant submits that it would not have been obvious to combine the references as suggested by the Examiner.

It is well settled that to support an obviousness rejection, the prior art must contain some teaching or suggestion to make the modifications suggested by the Examiner. In this regard, the Federal Circuit has stated that "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." (emphasis added) *In re Fritch*, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992.) Applicant respectfully submits that no such suggestion exists in any of the references to so modify or combine the elements to result in the Applicant's claimed invention as suggested by the Examiner. Applicant submits that the combination of the prior art references as suggested by the Examiner would NOT have been obvious at the time of the invention. If the Examiner persists with a rejection based upon combining these references Applicant requests evidence from the Examiner showing motivation to combine the references as suggested by the Examiner.

Regarding Claim 3:

The Examiner states that "it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice." However, Applicant submits that it would not have been an obvious design choice to manufacture the Niada, Cravatt, or Harris devices from essentially one unitary piece of molded plastic, as suggested by the Examiner. Further, although in some cases it may be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, it does not necessarily follow that selection of a known material is always obvious in every case. Thus, it is respectfully submitted that rejection of Claim 3 (and all Claims dependent thereon) should be withdrawn.

Regarding Claims 6, 12, 13:

The Examiner has stated "Dunn'367 teaches cutting means (26) is considered equivalent to at least one cutting guide as claimed to guide cutting dispensed material and the cutting means connected to the storage system/unitary piece. Applicant respectfully submits that the Dunn

reference does NOT teach a cutting **guide** as taught and claimed by Applicant, and that the serrations 26 of Dunn are not equivalent to a cutting guide. The serrations of Dunn merely cut. Applicant's specification (page 33, lines 4-8) teaches:

Preferably, user 412 pulls the desired amount of material 404 from selected roll of material 402 through dispenser 314 and cuts material 404 using a cutting tool (preferably scissors) with the assistance of cutting guide 316, as shown.

Clearly a guide, within the context of Applicant's specification and claims, is something that steadies or directs the motion of the user. Thus, it is respectfully submitted that rejection of Claims 6, 12, and 13 (and all Claims dependent thereon) should be withdrawn.

Regarding Claim 14:

The Examiner has stated that "the storage system of either Niada or Cravatt or Harris or Dunn'367 is capable of holding wrapping paper." Applicant respectfully disagrees. Wrapping paper comes in rolls that are more than 20 inches wide. The Niada, Cravatt, and Harris devices are designed for toilet paper rolls, and could NOT accommodate such wide rolls of wrapping paper. Further, the Dunn device is designed for common rolls of aluminum foil and plastic wrap, and is still NOT wide enough to accommodate such wide rolls of wrapping paper. Further, none of the prior art references teach an actual roll of wrapping paper. Claim 14 clearly sets out as an explicit claim element a roll of wrapping paper. Thus, it is respectfully submitted that rejection of Claim 14 (and all Claims dependent thereon) should be withdrawn.

Applicant believes that all Claims, as amended, are allowable with respect to 35 USC §103, and respectfully request that all such rejections be withdrawn.

Applicant respectfully points out, that according to the MPEP 706, "the examiner should never overlook the importance of his or her role in allowing claims which properly define the invention."

For the reasons given above, and after careful review of all the cited references, Applicant respectfully submits that none of the cited references nor any combination of the cited references will result in Applicant's claimed invention in the present Claims, as amended. But even if any such combination might arguably result in such claimed invention, it is submitted that such combination would be non-obvious and patentable.

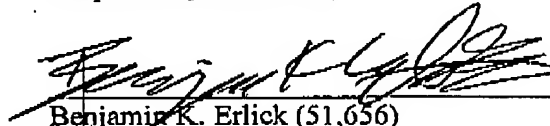
If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account NO. 50-1887.

Applicant respectfully requests (not as a matter of form but as a special request in this case) that the Examiner, after having an opportunity to review this Office Action Response, grant a telephonic interview to Applicant's undersigned agent in order to discuss Applicant's response to the Examiner's first Office Action (before the Examiner prepares a second office action), to attempt to reach mutual understanding and clarify any outstanding issues. Applicant respectfully requests that the Examiner call Applicant's undersigned agent at 602-263-9200 to schedule a

telephonic interview at least two business days in advance to allow the Applicant's undersigned agent time to prepare and schedule the interview. For telephonic scheduling purposes, Applicant's agent is located in Arizona, in the Mountain Standard Time zone.

Respectfully submitted,

Date: February 21, 2006


Benjamin K. Erlick (51,656)
3113 North 3rd Street
Phoenix, AZ 85012
(602) 263-9200
Agent For Applicant

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted, via facsimile, to the Patent and Trademark Office fax number (571)-273-8300 on February 21, 2006.

Date February 21, 2006

Signature: 

Benjamin K. Erlick, Agent for Appl.